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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,195	03/06/2001	Suk H. Cho	09143-017001	3370
26191 7590 01/16/2007 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER OH, SIMON J	
			ART UNIT	PAPER NUMBER
			1618	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 09/800,195	Applicant(s) CHO ET AL.	
	Examiner Simon J. Oh	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Papers Received

Receipt is acknowledged of the applicant's response and petition for extension of time, both received on 26 October 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 1-24, 33 and 34 under 35 U.S.C. 103(a) over Perkes (WIPO Publication No. WO 99/07400) in view of Shrikhande *et al.* (U.S. Patent No. 6,544,581) is maintained.

Response to Arguments

Applicant's arguments filed 26 October 2006 have been fully considered but they are not found to be persuasive.

Contrary to what the applicant asserts, the proper analysis of obviousness rests on the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), by determining the scope and contents of the prior art; ascertaining the differences between the prior art and the claims at issue; resolving the level of ordinary skill in the pertinent art; and considering objective evidence present in the application indicating obviousness or nonobviousness.

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Here, the applicant's invention is described broadly as a composition comprising a grape skin extract and a Muscat grape seed extract. The difference between the Perkes reference and the instant claims is the explicit mention of the use of Muscat grapes. To resolve the level of one of ordinary skill in the art, one looks to the disclosure of Shrikhande *et al.*, which gives the disclosure of the use of Muscat grape seeds in the course of obtaining a nutritional composition. In considering the objective evidence present, given the wide variety of grapes that are available, it stands to reason that some varieties are more useful than others in imparting health benefits, since all grapes are clearly not the same from variety to variety. Thus, one of ordinary skill in the art would look to Shrikhande *et al.* for guidance. Here, one of ordinary skill in the art is not bound to only what the prior art has disclosed as the best embodiment. Other useful embodiments are considered fairly taught in the prior art when resolving the difference between what is disclosed by the prior art and what the applicant is actually claiming. Thus, the disclosure of the use of Muscat grapes is not deemed to be a mere mention within the prior art. The examiner considers such a disclosure to be fair and proper guidance over the myriad varieties of grapes that exist that could conceivably be used in the invention of Perkes. Thus, the applicant's invention is deemed *prima facie* obvious in view of the prior art. Therefore, the prior art rejection of record is maintained.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

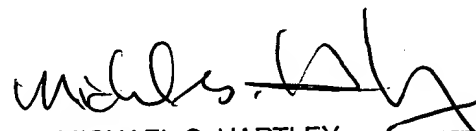
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh
Examiner
Art Unit 1618

sj0



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER